

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
Price Landfill Superfund Site,)	U.S. EPA Region 2
City of Pleasantville and)	Docket No. CERCLA-02-2011-2013
Egg Harbor Township,)	
New Jersey)	
)	
Atlantic City Electric Company,)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h) OF CERCLA,
)	42 U.S.C. § 9622(h)

I. JURISDICTION

1. This Settlement Agreement is entered into by the U.S. Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency by Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and redelegated to the Director of the Emergency and Remedial Response Division, Region 2, by Order R-1200, November 23, 2004. This Settlement Agreement is also entered into by the United States on behalf of EPA pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice. This Settlement Agreement is entered into by the New Jersey Department of Environmental Protection ("NJDEP") pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a, *et seq.* ("New Jersey Spill Act").

2. This Settlement Agreement is made and entered into by EPA and NJDEP and Atlantic City Electric Company ("ACE") (collectively, the "Parties"). ACE consents to and will not contest the authority of EPA, the United States, or NJDEP to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Price Landfill Superfund Site ("Site"), as defined herein, located in the City of Pleasantville and Egg Harbor Township, New Jersey. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). ACE currently owns a portion of the Site, specifically Block 801, Lots 114 and 115 on the tax map of Egg Harbor Township, as well as real property located adjacent to the Site.

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and NJDEP undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and the New Jersey Spill Act and will undertake additional response actions in the future. On September 29, 1986, EPA issued a Record of Decision selecting a groundwater remedy for the Site. EPA's remedial design for the groundwater remedy requires construction of a recharge basin on a portion of a parcel currently owned by ACE located adjacent to the Site.

5. In performing response action at the Site, EPA and NJDEP have incurred response costs and will incur additional response costs in the future.

6. EPA and NJDEP allege that, by virtue of its ownership of a portion of the Site, specifically Block 801, Lots 114 and 115, ACE is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and is jointly and severally liable for response costs incurred and to be incurred at the Site. NJDEP also alleges that ACE is a responsible person pursuant to the New Jersey Spill Act and is jointly and severally liable for cleanup and removal costs incurred by NJDEP at the Site.

7. EPA, NJDEP and ACE recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by ACE in accordance with this Settlement Agreement do not constitute an admission of any liability by ACE. ACE does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and NJDEP and upon ACE and their successors and assigns. Any change in ownership or corporate or other legal status of ACE, including but not limited to any transfer of assets or real or personal property, shall in no way alter ACE's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

9. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation among the Parties by allowing ACE to make (a) a cash payment, which includes a 50% premium, to EPA; and (b) an in-kind contribution through the transfer of the title to certain real property, which will be used for implementation of the remedy

at the Site, to NJDEP, to address its alleged civil liability for the Site as provided in the Covenants Not to Sue by EPA and NJDEP in Section IX, subject to the Reservation of Rights by EPA in Section X, Paragraph 23 and the Reservation of Rights by NJDEP in Section X, Paragraph 24.

V. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "ACE" shall mean Atlantic City Electric Company and its successors and assigns.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "New Jersey Spill Act" shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a *et seq.* and all regulations that implement its requirements.

h. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

i. "Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

k. "Parties" shall mean EPA, NJDEP and ACE.

l. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, including those set forth in the ROD and any modifications thereto.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, Operable Unit 2, signed on September 29, 1986, by the Regional Administrator, EPA Region 2, or his or her delegate, and all attachments thereto.

o. "Remedial Action" shall mean all activities required to implement the ROD until Performance Standards are met, and excluding performance of the Remedial Design, O&M, any subsequent operable units, and the activities required under Section XV (Retention of Records).

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

r. "Site" shall mean the Price Landfill Superfund Site, which occupies approximately 26 acres on Saw Mill Road, in Egg Harbor Township and the City of Pleasantville, Atlantic County, New Jersey, including Block 801, Lots 8, 113, 114 and 115 on the tax map of Egg Harbor Township, and Block 190, Lot 3, on the tax map of the City of Pleasantville, and including any area in the vicinity of the former Price Landfill where a hazardous substance related to past landfill operations has been deposited, stored, disposed of, or placed, or otherwise come to be located.

s. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. TRANSFER OF REAL PROPERTY

11. No later than September 1, 2011, ACE shall transfer to NJDEP title in fee simple to the following real property: a subdivided portion of Block 801, Lot 6, Egg Harbor Township, contiguous to the Site, consisting of 4.0 acres, as described more fully in the tax map attached hereto as Appendix A ("Property"). In the event Block 801, Lot 6 cannot be subdivided in sufficient time to transfer title by September 1, 2011, ACE shall complete the transfer of title to the Property to NJDEP by September 1, 2011 by any other means agreed upon in writing by the Parties.

12. Promptly after the transfer of title to the Property to NJDEP, but in any event no later than 30 Days thereafter, ACE shall arrange for the recordation of all documents relevant to the transfer in the appropriate governmental records office.

13. No later than 30 Days after the recordation of the transfer, ACE shall submit to EPA and NJDEP confirmation of the transfer of the Property to NJDEP and a true and correct copy of all deeds and evidence of filing for recordation, titles, and/or other instruments documenting the transfer of interest.

VII. PAYMENT OF RESPONSE COSTS

14. Within 30 Days after the Effective Date, ACE shall pay to the EPA Hazardous Substance Superfund \$1,162,500 , plus an additional sum for Interest on that amount calculated from June 30, 2010 through the date of payment.

15. Payment shall be made to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA Routing Number: 021030004
Account: 68010727
SWIFT Address: FRNYUS33, 33 Liberty Street, New York, NY 10045
Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

and shall reference the EPA Region and Site/Spill ID Number **0212** and the EPA docket number for this action.

16. At the time of payment, ACE shall send notice that payment has been made to:

Ira Perry Katz
Remedial Project Manager

United States Environmental Protection Agency - Region 2
290 Broadway – 19th Floor
New York, NY 10007 1866

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

Such notice shall reference the Site/Spill ID Number **0212** and EPA docket number for this action.

17. The total amount to be paid by ACE pursuant to Paragraph 14 shall be deposited by EPA in the Price Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

18. Interest on Late Payment. If ACE fails to make the payment required by Paragraph 14 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

19. Stipulated Penalty.

a. If ACE does not comply with any requirement of this Settlement Agreement, including those contained in Sections VI and VII, above, ACE shall be in violation of this Settlement Agreement and shall pay to EPA as a stipulated penalty, in addition to any Interest required by Paragraph 18, \$5,000.00 per violation per Day of such noncompliance.

b. Stipulated penalties are due and payable within 30 Days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Section shall be paid by official bank check made payable to "EPA Hazardous Substances Superfund," shall indicate that the payment is for stipulated penalties, shall reference the EPA Region and Site/Spill ID Number **0212**, the EPA Docket Number CERCLA-02-2011-2013, and the name and address of the party making payment, and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

c. At the time of payment, ACE shall send notice that payment has been made to:

Ira Perry Katz
Remedial Project Manager
United States Environmental Protection Agency - Region 2
290 Broadway – 19th Floor
New York, NY 10007-1866

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

Such notice shall reference the Site/Spill ID Number and EPA docket number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified ACE of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the Day after performance is due, or the Day a violation occurs, and shall continue to accrue through the date of payment or the final Day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

20. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of ACE's failure to comply with the requirements of this Settlement Agreement, in the event that ACE fails or refuses to comply with any term or condition of this Settlement Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, ACE shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

21. Where any compliance obligation under Section VI (Transfer of Real Property) requires ACE to obtain a federal, State, or local permit or approval, ACE shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals

in order to meet the deadlines and other obligations set forth in Section VI. ACE may seek relief under this paragraph from payment of stipulated penalties for any delay in the performance of any such obligation which results solely from a delay in obtaining any permit or approval required to fulfill such obligation, if ACE demonstrates to EPA that it has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. ACE's payment of stipulated penalties shall not excuse ACE from performance of any requirement of this Settlement Agreement.

IX. COVENANTS NOT TO SUE BY EPA AND NJDEP

22. Covenants Not to Sue by EPA and NJDEP. Except as specifically provided in Section X (Reservation of Rights by EPA and NJDEP), EPA and NJDEP covenant not to sue or to take administrative action against ACE pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or the New Jersey Spill Act, N.J.S.A. § 58:10-23.11, with regard to the Site. With respect to present liability, these covenants not to sue shall take effect upon performance of all actions required by Section VI (Transfer of Real Property) and receipt by EPA of all amounts required by Section VII (Payment of Response Costs) and any amounts due under Section VIII (Failure to Comply with Settlement Agreement). With respect to future liability, these covenants shall take effect upon Certification of Completion of the Remedial Action by EPA as provided in Paragraph 28 of Section X (Reservation of Rights by EPA). These covenants not to sue are conditioned upon the satisfactory performance by ACE of its obligations under this Settlement Agreement. These covenants not to sue extend only to ACE, as defined herein, and do not extend to any other person.

X. RESERVATION OF RIGHTS BY EPA AND NJDEP

23. General Reservations of Rights by EPA. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against ACE with respect to all matters not expressly included within the Covenants Not to Sue by EPA and NJDEP in Paragraph 22. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against ACE with respect to:

- a. liability for failure of ACE to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on ACE's ownership or operation of the Site when such ownership or operation commences after signature of this Settlement Agreement;

e. liability based on ACE's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

24. General Reservations of Rights by NJDEP. NJDEP reserves, and this Settlement Agreement is without prejudice to, all rights against ACE with respect to all matters not expressly included within the Covenants Not to Sue by EPA and NJDEP in Paragraph 22. Notwithstanding any other provision of this Settlement Agreement, NJDEP reserves all rights against ACE with respect to:

a. liability for failure of ACE to meet a requirement of this Settlement Agreement;

b. criminal liability;

c. liability based on ACE's ownership or operation of the Site when such ownership or operation commences after signature of this Settlement Agreement;

d. liability based on ACE's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

25. a. EPA's Pre-Certification Reservations. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel ACE to perform response actions relating to the Site and/or to reimburse EPA for additional costs of response if, (a) after October 1, 2010, but prior to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this

information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

b. NJDEP's Pre-Certification Reservations. Notwithstanding any other provision of this Settlement Agreement, NJDEP reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel ACE to perform response actions relating to the Site and/or to reimburse NJDEP for additional costs of response if, (a) after October 1, 2010, but prior to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to NJDEP, are discovered, or (ii) information, previously unknown to NJDEP, is received, in whole or in part, and (b) NJDEP determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

26. a. EPA's Post-Certification Reservations. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel ACE to perform response actions relating to the Site and/or to reimburse EPA for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

b. NJDEP's Post-Certification Reservations. Notwithstanding any other provision of this Settlement Agreement, NJDEP reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel ACE to perform response actions relating to the Site and/or to reimburse NJDEP for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to NJDEP, are discovered, or (ii) information, previously unknown to NJDEP, is received, in whole or in part, and (b) NJDEP determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

27. a. For purposes of Paragraph 25.a, the information and the conditions known to EPA includes only that information and those conditions known to or in the possession of EPA as of the Effective Date of this Settlement Agreement and set forth in the ROD, the administrative record supporting the ROD, and the post-ROD administrative record. For purposes of Paragraph 26.a, the information and the conditions known to EPA shall include only

that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the administrative record supporting the ROD, and the post-ROD administrative record.

b. For purposes of Paragraph 25.b, the information and the conditions known to NJDEP includes only that information and those conditions known to or in the possession of NJDEP as of the Effective Date of this Settlement Agreement and set forth in the ROD, the administrative record supporting the ROD, and the post-ROD administrative record. For purposes of Paragraph 26.b, the information and the conditions known to NJDEP shall include only that information and those conditions known to NJDEP as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the administrative record supporting the ROD, and the post-ROD administrative record.

28. As soon as reasonably practicable after the Remedial Action has been performed and the Performance Standards have been achieved, EPA will so certify in writing. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Settlement Agreement, including, but not limited to, Paragraphs 22, 25, 26, and 27, above.

XI. COVENANT NOT TO SUE BY ACE

29. ACE covenants not to sue and agrees not to assert any claims or causes of action against the United States, NJDEP or their respective contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States or NJDEP pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

Except as provided in Paragraph 31 (Waiver of Claims) and Paragraph 34 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event EPA or NJDEP brings a cause of action or issues an order pursuant to any of the reservations in Section X (Reservations of Rights by EPA and NJDEP), other than in Paragraphs 23(a) and 24(a) (claims for failure to

meet a requirement of the Settlement Agreement) or 23(b) and 24(b) (criminal liability), but only to the extent that ACE's claims arise from the same response action or response costs that EPA or NJDEP is seeking pursuant to the applicable reservation.

30. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, 40 C.F.R. 300.700(d), or the New Jersey Spill Act.

31. ACE agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that ACE may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against ACE.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

32. Except as provided in Paragraph 31 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 31 (claims against other PRPs), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States or NJDEP, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

33. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and the New Jersey Spill Act, and that ACE is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and the New Jersey Spill Act, or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, NJDEP, or by any other person; provided, however, that if EPA or NJDEP exercises rights under any of the reservations in Section X (Reservations of Rights by EPA and NJDEP), other than in Paragraphs 23(a) and 24(a) (claims for failure to meet a requirement of the Settlement Agreement) or 23(b) and 24(b) (criminal liability), the term

"matters addressed" as defined in this Paragraph will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that ACE's waiver of claims becomes inapplicable in accordance with Paragraph 31, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which ACE has resolved its liability to the United States and NJDEP, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), and the New Jersey Spill Act, for "matters addressed" as defined above.

34. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, or by NJDEP, for injunctive relief, recovery of response costs, or other relief relating to the Site, ACE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, entire controversy, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, or NJDEP, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by EPA and NJDEP set forth in Section IX.

35. ACE shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and NJDEP in writing no later than 60 Days prior to the initiation of such suit or claim. ACE shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA and NJDEP in writing within 10 Days of service of the complaint or claim upon it. In addition, ACE shall notify EPA and NJDEP within 10 Days of service or receipt of any Motion for Summary Judgment and within 10 Days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XIII. SITE ACCESS

36. Commencing upon the Effective Date, ACE agrees to provide EPA and/or NJDEP and their representatives and contractors, for purpose of conducting any response actions related to the Site, access at all reasonable times to any property owned or controlled by ACE at or in the vicinity of the Site, including but not limited to Block 801, Lots 114 and 115 on the tax map attached hereto as Appendix A, to which access is determined by EPA or NJDEP to be required for the implementation of this Settlement Agreement, or for the purpose of conducting any response actions related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;

- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by ACE or their agents, consistent with Section XIV (Access to Information).

37. Notwithstanding any provision of this Settlement Agreement, EPA and NJDEP retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. ACCESS TO INFORMATION

38. ACE shall provide to EPA or NJDEP, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

39. Confidential Business Information and Privileged Documents.

a. ACE may assert business confidentiality claims covering part or all of the records submitted to EPA or NJDEP under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 40 C.F.R. 2.203(b) and N.J.A.C. Chapter 7:1E. Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. Records determined to be confidential by NJDEP will be accorded the protection specified in N.J.A.C. Chapter 7:1E. If no claim of confidentiality accompanies records when they are submitted to EPA or NJDEP, or if EPA or NJDEP has notified ACE that the records are not confidential under the standards of Section 104(e)(7) of CERCLA, 40 C.F.R. Part 2, Subpart B, or N.J.A.C. Chapter 7:1E, the public may be given access to such documents or information without further notice to ACE.

b. ACE may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If ACE asserts such a privilege in lieu of providing records, it shall provide EPA with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (e.g., company or firm), and address of the

author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. ACE shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in ACE's favor. However, no records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

40. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

41. Until 10 years after the Effective Date, ACE shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

42. After the conclusion of the document retention period in the preceding Paragraph, ACE shall notify EPA at least 90 Days prior to the destruction of any such record, and, upon request by EPA, ACE shall deliver such records to EPA. ACE may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If ACE asserts such a privilege, it shall provide EPA with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. ACE shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in ACE's favor. However, no records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

XVI. CERTIFICATION

43. ACE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since August 16, 2007, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVII. NOTICES AND SUBMISSIONS

44. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA, NJDEP and ACE.

As to EPA:

Ira Perry Katz
Remedial Project Manager
United States Environmental Protection Agency - Region 2
290 Broadway – 19th Floor
New York, NY 10007-1866

As to NJDEP:

Joseph Maher
Case Manager
New Jersey Department of Environmental Protection
Site Remediation Program
401 East State Street
Trenton, NJ 08625

As to ACE:

Joanne Scanlon Prestia
Pepco Holdings, Inc.
Legal Services
Mail Stop: 92DC42

P.O. Box 6066
Newark, DE 19714-6066

XVIII. INTEGRATION/APPENDICES

45. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: Appendix A is a tax map for Egg Harbor Township, New Jersey, including the Site and real property described in Section VI (Transfer of Real Property).

XIX. PUBLIC COMMENT

46. This Settlement Agreement shall be subject to a public comment period of not less than 30 Days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i) and N.J.S.A. 58:10-23.11e2. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate. In accordance with N.J.S.A. 58:10-23.11e2, NJDEP may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XX. EFFECTIVE DATE

47. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 46 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

Atlantic City Electric Company

By: Susan H. Power /ipr

Susan H. Power
[Name]

Deputy General Counsel
[Title]

701 Ninth Street, NW

Washington, DC 20001

[Address]

May 20, 2011
[Date]

U.S. Environmental Protection Agency

By: 

Walter Mugdan, Director
Emergency and Remedial
Response Division

June 1, 2011
[Date]

U.S. Department of Justice

By: Ignacia S. Moreno
Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

6/20/11
[Date]

By: Bethany Engel
Bethany Engel
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

6/21/11
[Date]

New Jersey Department of Environmental Protection

By:

David Sweeney

[Name]

Assistant Commissioner

[Title]

401 E. State St

Trenton NJ

08625

[Address]

6/9/11

[Date]

Price Landfill Superfund Site Settlement Agreement

Docket No. CERCLA-02-2011-201.

APPENDIX A

